

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COUNTYWIDE FINANCIAL CORPORATION,  
COUNTRYWIDE HOME LOANS, INC., AND  
BANK OF AMERICA CORPORATION

and

Case 31-CA-072916

JOSHUA D. BUCK AND MARK THIERMAN,  
THIERMAN LAW FIRM

and

Case 31-CA-072918

PAUL CULLEN, THE CULLEN LAW FIRM

NOTICE TO SHOW CAUSE

On August 14, 2015, the National Labor Relations Board issued a Decision and Order, 362 NLRB No. 165, finding that the Respondent violated Section 8(a)(1) of the Act by both (1) maintaining or enforcing/applying a mandatory arbitration agreement that requires employees to waive the right to maintain class or collective actions in all forums; and (2) maintaining a mandatory arbitration agreement that employees would reasonably believe bars or restricts their access to the Board. On June 29, 2018, the United States Court of Appeals for the Ninth Circuit denied enforcement, in light of *Epic Systems Corp. v. Lewis*, 584 U.S. \_\_\_, 138 S. Ct. 1612 (2018), of the Board's Order on the first finding and remanded the second finding back to the Board.

At the time of the Board's decision, and Administrative Law Judge William G. Kocol's February 13, 2013 decision that the Board affirmed in relevant part as to (2), above, the issue whether maintenance of a policy that did not expressly restrict employee access to the Board violated Section 8(a)(1) on the basis that employees would reasonably believe it did would be resolved based on the prong of the analytical framework set forth in *Lutheran Heritage Village-*

*Livonia*, 343 NLRB 646 (2004), that held an employer’s maintenance of a facially neutral work rule would be unlawful “if employees would reasonably construe the language to prohibit Section 7 activity.” *Id.* at 647. Recently, the Board overruled the *Lutheran Heritage* “reasonably construe” test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154, slip op. at 14-17 (2017).

Accordingly, the Board hereby issues the following notice to show cause why this issue should not be remanded to a judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

**NOTICE IS GIVEN** that any party seeking to show cause why this case should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before October 29, 2018 (with affidavit of service on the parties to this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., October 15, 2018.

By direction of the Board:

/s/ Roxanne L. Rothschild

Executive Secretary